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PART-IV

GOVERNMENT OF MEGHALAYA

LAW (B) DEPARTMENT

NOTIFICATION

The 18th December, 2018.

No.LL(B)170/84/57. - The Meghalaya Electricity Duty (Amendment) Ordinance, 2018 (Ordinance No. 3 of 2018) is hereby published for general information.

MEGHALAYA ORDINANCE NO. 3 OF 2018.

Promulgated by the Governor on 18th December, 2018.

Published in the Gazette of Meghalaya Extra-Ordinary issue dated 18th December, 2018.

THE MEGHALAYA ELECTRICITY DUTY (AMENDMENT) ORDINANCE, 2018

An Ordinance

further to amend and clarify the Meghalaya Electricity Duty Act, (as adapted from the Assam Electricity Act No. XXX of 1964 and amended by Meghalaya) and to validate certain actions;

Whereas under Article 246 of the Constitution of India, read with Entry 53 of List II of the Constitution of India, the States have the plenary power to impose Taxes on the consumption or sale of electricity; and

Whereas in the year 1964, the Composite State of Assam enacted the Assam Electricity Duty Act, 1964 [which became effective in the full fledged State of Meghalaya vide the North Eastern Areas (Reorganisation) Act, 1972 (Central Act No. 81 of 1971) with certain modification and adaptations made by the Meghalaya Taxation Laws (Modifications) Act, 1972 (Meghalaya Act No. 1 of 1973) hereinafter referred to as “the principal Act in order to levy a duty on the consumption of sale of electricity; and

Whereas in the Preamble of the principal Act, it has been unequivocally stated that it has been enacted to levy a duty on the sale or consumption of electricity; and

Whereas under clause (c) of sub-section (1) of Section 3 of the principal Act provides for levy of duty on captive consumption of electricity, i.e. on the consumption of electricity by a person generating it for own use or consumption; and

Whereas under sub-section (3) of Section 3 of the principal Act stipulates that the electricity duty under section 3 shall be computed and levied on the basis of the monthly consumption as shown in the electricity consumption meter; and

Whereas the levy of electricity duty under clause (c) of sub-section (1) of Section 3 is and has always been on the consumption of electricity by a person generating it for own use or consumption; and

Whereas the consumption of electricity by the same person who generates it would be liable to be taxed under the statutory provisions enacted in terms of Entry 53 of List II of the Constitution of India; and

Whereas in a recent judicial pronouncement, it has been held by the Hon’ble High Court of Gauhati, that under clause (c) under sub-section (1) of Section 3 of the Assam Electricity Duty Act 1964 (which was adapted and amended by Meghalaya as stated above) is ultra vires the Constitution of India and is beyond the legislative competence of the State; and

Whereas the Meghalaya Electricity Duty Act has been challenged in the Hon’ble High Court of Meghalaya and it is apprehended that the Hon’ble High Court may take a similar stance; and

Whereas it has become necessary to clarify beyond all doubts and declare that the levy of electricity duty under clause (c) of sub-section (1) of Section 3 read with sub-

section (3) of Section 3 is and has always been on the consumption of electricity by the person generating it for own consumption; and

Whereas as a matter of abundant caution, it has also become necessary and necessary to validate all actions taken in terms of clause (c) of sub-section (1) of Section 3 of the principal Act;

Whereas, the Legislature of the State of Meghalaya is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action;

Now, therefore, in exercise of the powers conferred by clause (1) of Article 218 of the Constitution, the Governor is pleased to promulgate in the Sixty ninth year of the Republic of India, the following Ordinance :-

Short title and commencement.

1. This Ordinance may be called the Meghalaya Electricity Duty (Amendment & Validation) Ordinance, 2018.

(2) It shall come into force at once.

Amendment of Section 3

2. In the Meghalaya Electricity Duty Act (as adapted from Assam Electricity Act, No. XXX, of 1964) Act, the existing Clause (c) of sub-section (1), of Section (3), the following shall be deemed to have been substituted with effect from the 21st Day of January, 1972, namely:-

“(c) Consumed by any person or any organization generating energy”.

Validation

3. Notwithstanding anything contained in any judgment, decree or order of any court or other authority to the contrary, electricity duty levied or collected as the electricity duty under the Meghalaya Electricity Duty Act, (adapted in Assam Electricity Act, No. XXX of 1964) as amended from time to time, and all actions taken, things done, rules made, notifications issued or purported to have been taken, done, made or issued under the said Act shall, for all purposes, be deemed to be and to have always been

validly levied, collected, taken, done, made or issued under the provisions of this Act, as if this Act were enforced at all material times and accordingly,-

(a) no suit or other proceeding shall be maintained or continued in, or before any Court, tribunal or other authority for the refund of any amount received or realized by way of such electricity duty;

(b) no Court, tribunal or other authority shall enforce any decree or order directing the refund of any amount received or realized by way of such electricity duty;

(c) any proceeding, act or thing which could have been validly taken, continued or done for the levy or collection of such electricity duty at any time under the provisions of the said Act but which not had been taken, continued or done, may be taken, continued or done.

Dated Raj Bhavan,
Shillong, the 18th December, 2018.



TATHAGATA ROY,
Governor of Meghalaya.

Dated Shillong, the 18th December, 2018.

A. K. SANGMA,
Joint Secretary
to the Government of Meghalaya
Law Department.